

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.Rev.Pet.No. 3242 of 2007()

AGAINST THE ORDER DATED 10/08/2007 IN CMP 4879/2007 IN
MC.146/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI
.....

REVN. PETITIONER: RESPONDENT

K.E.ANTONY, S/O.EASY, AGED 49 YEARS,
KOLLASSERY HOUSE, KONAM, PALLURUTHY P.O.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: STATE AND APPLICANT

-
1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
 2. PUSHPY ANTONY, W/O.ANTONY,
AGED 41 YEARS, CC XXI/269A,
KOLLASSERY HOUSE, M.A.MATHEW ROAD,
PALLURUTHY, KOCHI - 6.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR, J.

*** * * * ***

Crl.R.P. No. 3242 of 2007

*** * * * ***

Dated: 6th day of September 2007

ORDER

The revision petitioner who was the respondent in M.C. 146 of 2007 on the file of J.F.C.M.-II, Kochi, filed by the 2nd respondent herein challenges the order dated 10-8-2007 passed by the Magistrate in C.M.P. No. 4879 of 2007 in the said M.C. rejecting the revision petitioner's contention that since the cause of action arose prior to the commencement of The Protection of Women From Domestic Violence Act, 2005 ("P.W.D.V. Act " for short) which has no retrospective effect , M.C. 146 of 2007 filed by his wife is not maintainable.

2. The revision petitioner admittedly married the 2nd respondent on 17-9-1989. Two children have been born in that wedlock. Both the spouses resided together in the matrimonial home at Perumpadappu till 25-9-2004 after which the marital partners separated. On 13-7-2007, the wife filed M.C. 146 of 2007 before the Magistrate inter alia seeking a protection order under Sec. 18, residence order under Sec. 19, monetary relief under Sec. 20 and compensation under Sec. 22 of the P.W.D.V. Act. As per C.M.P. 4879 of 2007 accompanied by an affidavit in Form No. III of the Protection of Women from Domestic Violence Rules, 2003 she had sought interim orders under Sec. 23 (2) of the said Act. After entering appearance before the Magistrate, the revision petitioner filed his objections in which he inter alia contended that since the alleged domestic relationship in the shared household existed till 25-9-2004

and the P.W.D.V. Act came into force only on 26-10-2006, the revision petitioner could not be proceeded against under the provisions of the said Act which does not have any retrospective operation. As per the impugned order, the learned Magistrate repelled the said contention. Hence, this revision.

3. It is true that the alleged domestic violence was committed prior to the commencement of the P.W.D.V. Act . But there is nothing in Sec. 3 or other provisions of the said Act to suggest that the acts of domestic violence committed only after the commencement of the said Act can be dealt with under the provisions of the said Act. A reading of the provisions of the said Act will indicate that it is not a penal statute. The reliefs provided thereunder are only civil remedies being granted through the instrumentality of the Magistracy and it is only when an order passed under the various provisions of the Act is violated could there be a prosecution under Sec. 31 of the Act. Going by the definition of "aggrieved person" in Sec. 2(a) , it is clear that a woman who is, or who has been in a "domestic relationship" with the respondent will be covered by the said definition. The definition of "Domestic Relationship" under Sec. 2 (f) shows that it is a relationship between two persons who live or have, at any point of time, lived together in a "shared household". Hence, if any act of domestic violence as envisaged by the said Act has been committed whether before or after the commencement of the Act, the statute provides various remedies under Sections 17 to 22 of the said Act and under Sec. 23 (2) of the Act the Magistrate is invested with the power to grant interim ex parte orders under Sections 18,19,20,21 and 22 of the said Act. Such being the scheme of the statute, I am not inclined to accept the revision petitioner's contention that if the act

of domestic violence is committed prior to the commencement of the Act the provisions in the Act cannot be resorted to. The Magistrate was fully justified in rejecting above the contention raised by the revision petitioner.

This revision is accordingly dismissed.

**V. RAMKUMAR,
(JUDGE)**

ani.

